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AUTHOR Malchiodi, Cathy A.
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ABSTRACT

Possibly one of the most confusing and controversial aspects of the practice of art therapy has been the maintenance, storage, and disposition of client art expressions. The AATA (American Art Therapy Association) Code of Ethics for Art Therapists and its 1994 revision, "Ethical Standards for Art Therapists," are critiqued. There has been difficulty in ascertaining from the 1994 statement whether art expressions are considered "treatment records" per se, and if they are, whether they must be retained for the stipulated 7-year period. The issue of whether the client owns the art or if it constitutes a medical record has been controversial. Record-keeping involving art expressions in the form of slides, photographs or photocopies can be problematic. Often art created in treatment is extensive, and the question of how completely to reproduce the art is problematic. While an ethical code must be compliant with existing laws and regulations, this article calls for the continued exploration of the significance, meaning and impact of art expression in the lives of clients. (JBJ)

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Who Owns the Art? An Ethical Question for Art Therapists and Clinicians

Cathy A. Malchiodi, MA, A.T.R., LAT, LPCC, Director of Institute for Arts & Health, Salt Lake City, UT 84108-2853

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The 25th Annual AATA Conference not only marked the silver anniversary of the association, but also the introduction of a new ethics document for art therapists. The AATA Ethics Committee Chair Cay Drachnik, AATA Board member Jeanne Carrigan, and AATA legal counsel, Jonathan Braverman presented an overview of the new document at a general session of the conference. Many of the topics presented were of no surprise: confidentiality and privacy, responsibility to patients, research subjects, students and supervisees, and professional integrity and competence. However, the issue of what to do with client art made in therapy was one topic which captured the interest of many who were in attendance and concerns began to emerge, some of which have been expressed by Spring (1994) and Neustadt (1995), among others.

Possibly one of the most confusing and controversial aspects of the practice of art therapy has been the maintenance, storage and disposition of client art expressions. AATA ethics documents have addressed this issue in different ways. The 1990 version of the *Code of Ethics for Art Therapists* , under the section titled "Confidentiality" states:

> Art therapists make provisions for maintaining confidentiality in storage and disposal of records and art expressions. (AATA, 1990)

The latest draft of the what is now referred to as *Ethical Standards for Art Therapists* (AATA, 1994) is somewhat more explicit, stating:

> Art therapists shall maintain patient treatment records for a reasonable amount of time consistent with state regulations and sound clinical practice, but not less than seven years from completion of treatment or termination of the therapeutic relationship. Records are stored or disposed of in ways that maintain confidentiality. (Section 2.6)

This more recent document uses the term "patient treatment records" and stipulates that such records must be retained for a period of seven years from termination. It is difficult to say from reading this statement whether art expressions are considered "treatment records" per se, or if they are, that they must be retained for the seven year period stipulated. The language seems

noticeably vague, although it is reported to be compliant with laws that stipulate that records must be kept for a minimum amount of time (Braverman, 1995).

The issue of who "owns" client art expressions has come up in Ethics Committee discussions over the last several years. Legal counsel Braverman notes that the "recovery of art and treatment records, and the inability or refusal of therapists to return patient artwork.... have been one of the more common areas of complaints to the Committee on Ethics and Professional Practice (CEPP)" (p. ?, 1995). It seems that some art therapists have very definite feelings that the client owns the art created within art therapy, while others see the situation quite differently, preferring to retain the original work as a record of treatment. Braverman also notes however strongly some art therapists feel that the client owns the art made in therapy, "in many instances artwork constitutes a medical record" (p.?, 1995). The legal implication seems to be that art therapists should keep records of art made in the course of therapy, preferrably in a visual form.

Record-keeping involving art expressions (as opposed to descriptive notes on client art) in the form of slides, photographs or photocopies or the actual artwork can be problematic. The difficulty with these strategies comes in considering how not only much photography, photocopying is legally required, but also necessary and feasible. Consider, for example, those art therapists who see a great many clients; how to take and store photographs/slides of every piece that a client creates has boggled my mind on occasion, particularly when working with adults or children who have been abused, situations that necessitate accurate record-keeping. But there are other situations that create problems for maintenance of complete visual records of client art. Fantasize if you will the hyperactive child who goes through a half ream of computer paper, filling up an endless series of pages with scribbles. The groups I lead also give me pause in this regard; when there may be up to fifteen people in a group, the physical machinations required to either photograph or store work for later photography is literally exhausting. In these cases, a real problem faced by art therapists is a cost-effective means of maintaining records of all art created in the therapeutic setting as well as the space to physically store such material.

Although the issue of ownership of client art may seem to be obvious to many art therapists, it is also fair to say that the issues of ownership are

complex and that this is a topic that members should be actively encouraged to provide input on and be heard. Spring points out in a recent statement on ownership that what is legally required may in fact be different from our clients' as well as our individual ethical beliefs. In a recent issue of the *AATA Newsletter*, she (1994) notes the following:

> I do not believe the storage, retrieval and disposal of the clinical art record has had sufficient debate to make quick, uniformed decision. The return of artwork to the patient, without any visual clinical record being kept by the therapist, has not been challenged in court. As art therapy becomes more widely used, and more art work is brought into criminal and civil litigation, we will probably be forced to face the issue. A decision may be made for us by a judge or a jury. (p. 28)

The outcome of this dilemma may not only be rooted in medical regulations, but may also involve laws that effect artists and their works. (The latter is an area of law in and of itself; for more information see Duboff, 1993; Crawford, 1994).

Additionally, in retaining client art in any form, we also have some more subtle aspects to consider. By definition, art therapists are characteristically more sensitive in how we view art expression and subquently in how the client sees the art s/he creates. The latter is one of many ethical questions that we must ask ourselves with regard to the disposition of art made in therapy. A client's perspective may depend on many variables: the type of art therapy, the agency/facility in which the therapy takes place, the style of the practitioner, as well as the client's own view of art and art making. Children, for example, often have a difficult time perceiving art therapy as something other than an art class, although it has been explained to them that the purpose of the art activity is therapeutic (Malchiodi, 1990; 1991); this may hold true for some adult clients as well. Also, the type of task assigned to the client may have an impact on whether or not the art expression is important for the client to keep. When asked to do a projective drawing series such as drawings of a house, tree and person, I have rarely seen a client who didn't realize that I might be using these art

expressions in evaluation; they often choose not to keep these drawings. On the other hand, my adult clients with AIDS or cancer who are working on issues involving life review, grief and death are engaged in making personal, meaningful art that they want to keep, share with others, or leave to someone as a visual legacy. Other issues that relate to the topic of ethics and artwork, but are too numerous to mention, include cross-cultural perspectives on art expression (Cattaneo, 1994), client abandonment of art (Moon, 1994), and a general regard for images in general (McNiff, 1991).

As a profession, art therapists are possibly the only group that makes reference to art expression in their ethics document. Many health professionals (social workers, counselors, psychologists, etc.) use art directives in their clinical work with patients; however, ethical codes governing these professionals do not, to my knowledge, have rules about the disposition of art expressions. As registered, certified and/or licensed art therapists, we have made a special commitment to follow the ethical standards as set forth by the AATA to respect the art of our clients. We also must remember that those of us who are members of the AATA are bound by whatever our association determines to be the guidelines for disposition of client art. Spring (1994) and Neustadt note that if a decision is going to be made on this vital question, it should a decision made by the members after there has been sufficient published debate. However, unlike the previous 1990 ethical code for art therapists, this newest draft was not voted on by the membership and was developed by the AATA Board of Directors with the advice of legal counsel. Despite this decision, the importance of this topic is one that all art therapists must continue to examine. Granted, an ethical code must be compliant with existing laws and regulations; most art therapists are not well-versed in these areas. However, we are as a profession dedicated to the importance of art in the lives of people, and as such, must continue as a group to explore the significance, meaning and impact of art expression in the lives of our clients.

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